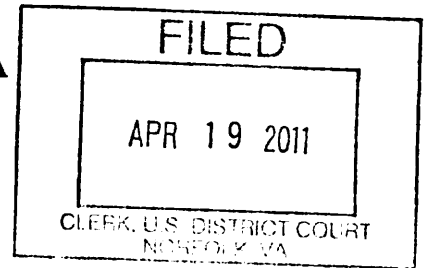


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



**PATENT LICENSING AND
INVESTMENT COMPANY, LLC,**

Plaintiff/Counter-Defendant,

v.

Case No. 2:10CV421

GREEN JETS INCORPORATED,

Defendant/Counter-Claimant.

OPINION AND ORDER

This matter is before the Court on Plaintiff Patent Licensing and Investment Company, LLC's ("Plaintiff") Motion to Dismiss Counterclaim and Affirmative Defenses ("Motion to Dismiss"), Doc. 14, and Defendant Green Jets Inc.'s ("Defendant") Motion for Leave to File Amended Answer, Affirmative Defenses, and Counterclaims ("Motion for Leave to File"), Doc. 20. For the following reasons, the Court **GRANTS** Defendant's Motion for Leave to File, **ORDERS** that the Amended Answer, Doc. 21-1, is deemed filed, **DISMISSES AS MOOT** Plaintiff's Motion to Dismiss, and **ORDERS** Plaintiff to file responsive pleadings to the Amended Answer by April 29, 2011.

Plaintiff brought this patent infringement action under 35 U.S.C. §§ 271, et seq. On February 2, 2011, Defendant filed its Answer, which included affirmative defenses and counterclaims. Doc. 11. On February 22, 2011, Plaintiff filed its Motion to Dismiss. Doc. 14.

On March 7, 2011, Defendant filed its Motion for Leave to File, Doc. 20, and attached an Amended Answer and Counterclaims (“Amended Answer”) to the memorandum in support of its motion. Doc. 21-1. Pursuant to 28 U.S.C. §§ 636(b)(1)(B) and (C), Federal Rule of Civil Procedure 72(b), Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia, and by order of reference filed April 1, 2011, Doc. 35, this matter was referred to United States Magistrate Judge Douglas E. Miller for a Report and Recommendation.

After a telephone hearing held on April 1, 2011, on the same day, Magistrate Judge Miller submitted a Report and Recommendation (“R&R”). Doc. 37. The R&R finds that Defendant timely filed its Motion for Leave to File as a matter of course pursuant to Federal Rule of Civil Procedure 15(a)(1)(B) because Defendant filed the motion within twenty-one days after service of Plaintiff’s Motion to Dismiss. R&R p. 2. The R&R also takes note that Plaintiff does not oppose Defendant’s right to amend its Answer and suggests that Plaintiff file an appropriate pleading if Plaintiff wishes to challenge perceived defects in the Amended Answer once the Amended Answer is deemed filed. Id. Magistrate Judge Miller recommended the following: (1) that Defendant’s Motion for Leave to File be granted; (2) that the Amended Answer be deemed filed; (3) that Plaintiff’s Motion to Dismiss be dismissed as moot; and (4) that Plaintiff be ordered to file responsive pleadings to the Amended Answer by April 29, 2011. Id.

By copy of the R&R, each party was advised of their right to file written objections to the findings and recommendations made by the Magistrate Judge within fourteen (14) days from the date the R&R was mailed, pursuant to Rule 6(a) of the Federal Rules of Civil Procedure. The time for filing written objections has since passed, with neither party filing an objection. As indicated in the R&R, “failure to file timely objections to the findings and recommendations set

forth [in the R&R] will result in a waiver of the right to appeal from a judgment of this Court based on such findings and recommendations.” See R&R, pp. 55-56.

This Court has reviewed the R&R and hereby **ADOPTS AND APPROVES** the findings and recommendations set forth in the R&R filed on April 1, 2011. Accordingly, the Court **GRANTS** Defendant’s Motion for Leave to File, **ORDERS** that the Amended Answer is deemed filed, **DISMISSES AS MOOT** Plaintiff’s Motion to Dismiss, and **ORDERS** Plaintiff to file responsive pleadings to the Amended Answer by April 29, 2011.

Plaintiff is advised that he may appeal from this Opinion and Order by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. Said written notice must be received by the Clerk within sixty (60) days from the date of this Order.

The Clerk is **REQUESTED** to send a copy of this Opinion and Order to all counsel of record.

It is so **ORDERED**.

/s/
Henry Coke Morgan, Jr.
Senior United States District Judge

HENRY COKE MORGAN, JR. 
SENIOR UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
April, 17 2011